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New Brunswick Human Rights Commission

Supreme Court issues decision on mandatory retirement case (08/07/22)

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FREDERICTON (CNB) - The Supreme Court issued a decision on Friday, July 18, on the meaning of an exception in the province's *Human Rights Act* that allows employers to have a mandatory retirement policy if they have bona fide retirement or pension plans.

"We are disappointed with the Supreme Court's decision," said Gordon Porter, chair of the Human Rights Commission. "It is not what we were looking for. The court's split 4-3 decision illustrates the difficulty in applying the pension plan exception.

"In 2004, the commission recommended that this exception be repealed, and we will be strongly urging the government to move forward on this issue. In 2005, the government of the day introduced a bill to repeal it, but it died on the order paper when the election was held.

"Mandatory retirement is clearly age discrimination. A person who wants to continue to work should be allowed to do so. It is a question of fairness, and it makes economic sense. By next year, mandatory retirement will have been abolished throughout Canada, except at the federal level. Only Newfoundland and New Brunswick retain an exception that explicitly allows mandatory retirement for employees who receive a pension from their employer."

The court's decision arose out of a human rights complaint filed by Melrose Scott, a miner from Sussex, who claimed that the Potash Corp. of Saskatchewan discriminated against him on the basis of age when it refused to allow him to continue working past the age of 65. The company's position is that its mandatory retirement policy is justified because it has a bona fide pension plan. Paragraph 3(6)(a) of the *Human Rights Act* allows mandatory retirement when it is because of a bona fide retirement or pension plan.

In the court's split decision the majority decided that to meet the bona fide pension plan requirement a pension plan must be a legitimate plan adopted in good faith and not for the purpose of defeating protected rights. Registration under the *Pension Benefits Act* is one helpful indication of the bona fides of a pension plan.

The court's decision is based on the interpretation of the pension plan exception, not the validity of Scott's complaint. Its decision is meant to guide the Human Rights Board of Inquiry in its application of the pension plan exception to the Scott case.

More information on the decision may be found on the Judgments of the Supreme Court of Canada site.

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MEDIA CONTACT: Francis Young, human rights officer, New Brunswick Human Rights Commission, 506-453-2301 or 1-888-471-2233.

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